

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Maura Roche	Team: Squad #10	CCRB Case #: 201908026	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input checked="" type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 09/02/2019 6:45 PM, Friday, 03/13/2020 9:40 AM	Location of Incident: § 87(2)(b) 100 Church Street	18 Mo. SOL 10/17/2021	Precinct: 67		
Date/Time CV Reported Thu, 09/12/2019 9:44 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 09/12/2019 9:44 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Carl Scogmanillo	04519	940723	067 PCT
2. POM Joseph Viti	09113	958153	067 PCT
3. POM Elvis Collado	30692	965002	067 PCT
4. DTS Devin Baker	1595	952439	067 PCT
5. POM Jonathan Colon	28889	952608	067 PCT
6. INS Elliot Colon	00000	905982	067 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Joel Moya	25916	964178	067 PCT
2. POF Loren Orellana	21486	965381	067 PCT
3. LT Kevon Sample	00000	935679	019 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Carl Scogmanillo	Abuse: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Sergeant Carl Scogmanillo arrested § 87(2)(b)	§ 87(2)(b)
B.POM Joseph Viti	Force: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Police Officer Joseph Viti used physical force against § 87(2)(b)	§ 87(2)(b)
C.POM Elvis Collado	Force: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Police Officer Elvis Collado used physical force against § 87(2)(b)	§ 87(2)(b)
D.POM Joseph Viti	Discourtesy: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Police Officer Joseph Viti spoke discourteously to § 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
E.INS Elliot Colon	Abuse: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Inspector Elliot Colon arrested § 87(2)(b)	
F.DTS Devin Baker	Force: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Detective Devin Baker slammed § 87(2)(b) against a wall.	
G.DTS Devin Baker	Force: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Detective Devin Baker slammed § 87(2)(b) against the ground.	
H.DTS Devin Baker	Force: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Detective Devin Baker restricted § 87(2)(b) breathing.	
I.DTS Devin Baker	Force: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Detective Devin Baker used a chokehold against § 87(2)(b)	
J.DTS Devin Baker	Force: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Detective Devin Baker used physical force against § 87(2)(b)	
K.POM Joseph Viti	Force: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Police Officer Joseph Viti used physical force against § 87(2)(b)	
L.POM Elvis Collado	Force: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Police Officer Elvis Collado used physical force against § 87(2)(b)	
M.POM Jonathan Colon	Force: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Police Officer Jonathan Colon used physical force against § 87(2)(b)	
N.DTS Devin Baker	Discourtesy: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Detective Devin Baker spoke discourteously to § 87(2)(b)	
O.SGT Carl Scogmanillo	Force: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Sergeant Carl Scogmanillo used physical force against § 87(2)(b)	
P.DTS Devin Baker	Untruthful Stmt.: On March 13, 2020, at 100 Church Street in Manhattan, Detective Devin Baker provided a misleading official statement to the CCRB.	
§ 87(2)(g), § 87(4-b)		

Case Summary

On September 12, 2019, § 87(2)(b) filed this complaint on behalf of himself and his daughter, § 87(2)(b) with the CCRB by phone.

On September 2, 2019, § 87(2)(b) was hosting a Labor Day and West Indian Day Parade party at his home, located at § 87(2)(b) in Brooklyn. A DJ, § 87(2)(b) was playing music in the driveway, and § 87(2)(b) neighbors, § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b) were on the sidewalk and in his driveway listening to the music. At approximately 6:45 p.m., Sgt. Carl Scogmanillo, PO Joseph Viti, PO Jonathan Colon, PO Elvis Collado, PO Joel Moya, and PO Loren Orellana, all of the 67th Precinct (Sgt. Scogmanillo has since been transferred to the Training Bureau), arrived at the location. Sgt. Scogmanillo approached § 87(2)(b) who immediately turned off the music. § 87(2)(b) approached, and Sgt. Scogmanillo asked him for his ID so that he could issue him a summons. When § 87(2)(b) refuse to provide his ID to Sgt. Scogmanillo, Sgt. Scogmanillo told PO Viti and PO Collado to place § 87(2)(b) under arrest for obstruction of governmental administration (OGA) (**Allegation A: Abuse of Authority – Retaliatory Arrest**, § 87(2)(g) PO Viti and PO Collado took § 87(2)(b) by the arms and put one handcuff on his right wrist (**Allegations B and C, Force – Physical force**, § 87(2)(g) While placing § 87(2)(b) into handcuffs, PO Viti told § 87(2)(b) “Give me your fucking hands!” (**Allegation D: Discourtesy – Word**, § 87(2)(g)

Lieutenant Kevon Sample, of the 19th Precinct, who had been in the vicinity all day, intervened and instructed PO Colon and PO Viti to release § 87(2)(b) Lieutenant Sample obtained § 87(2)(b) ID, gave it to Sgt. Scogmanillo, and told Sgt. Scogmanillo to issue § 87(2)(b) a summons. Sgt. Scogmanillo disagreed with Lieutenant Sample, so he contacted his immediate supervisor. Within a few minutes, Inspector Elliot Colon and Det. Devin Baker, also of the 67th Precinct, arrived at the location. Sgt. Scogmanillo told Inspector Colon that he had probable cause to arrest § 87(2)(b) and Inspector Colon agreed (**Allegation E: Abuse of Authority – Retaliatory Arrest**, § 87(2)(g)

Sgt. Scogmanillo decided to proceed with arresting § 87(2)(b) so Det. Baker approached § 87(2)(b) in the driveway, pushed § 87(2)(b) against the wall (**Allegation F: Force – Hit Against Inanimate Object (wall)**, § 87(2)(g) threw § 87(2)(b) down to the ground (**Allegation G: Force – Hit Against Inanimate Object (Ground)**, § 87(2)(g) laid his body weight down on § 87(2)(b) chest, (**Allegation H: Force – Restricted Breathing**, § 87(2)(g) allegedly lifted § 87(2)(b) head up from the ground by his neck (**Allegation I: Force – Chokehold**, § 87(2)(g) and punched § 87(2)(b) in the head three times (**Allegation J: Force – Physical force**, § 87(2)(g) While Det. Baker was lying on top of § 87(2)(b) PO Viti, PO Collado, and PO Colon restrained § 87(2)(b) arms and legs (**Allegations K, L, and M: Force – Physical Force**, § 87(2)(g) and, as they handcuffed him, Det. Baker said, “Give me your fucking hands!” (**Allegation N: Discourtesy Word**, § 87(2)(g) At the same time, Sgt. Scogmanillo pushed § 87(2)(b) away from Det. Baker and § 87(2)(b) (**Allegation O: Force – Physical Force**, § 87(2)(g)

Body-worn camera footage was obtained from Sgt. Scogmanillo (**BR 02, BR 03, and BR 04**), PO Collado (**BR 05, BR 06, and BR 07**), PO Viti (**BR 08, BR 09, and BR 10**), PO Colon (**BR 11, BR 12, BR 13, and BR 14**), PO Moya (**BR 15, BR 16, and BR 17**), and PO Orellana (**BR 18, BR 19, BR 20, and BR 21**). Cell phone video (**BR 22, BR 23, BR 24, BR 25, BR 26, BR 27, BR 28, and BR 29**) and security footage (**BR 30, BR 31, BR 32, BR 33, and BR 34**) of the incident were also obtained. The relevant portions of the videos are discussed below.

§ 87(2)(b) was arrested for criminal possession of a weapon, unreasonable noise, resisting arrest, and OGA (**BR 35**). The incident resulted in no other arrests or summonses.

On March 13, 2020, at the CCRB offices, located at 100 Church Street in Manhattan, Det. Baker provided a false official statement regarding a memo book entry (**BR 36**) that he had made regarding the incident (**Allegation P: Misleading official statement**, § 87(2)(g)

§ 87(2)(g), § 87(4-b)

Findings and Recommendations

Allegation (A) Abuse of Authority: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Sergeant Carl Scogmanillo arrested § 87(2)(b)

Allegation (E) Abuse of Authority: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Inspector Elliot Colon arrested § 87(2)(b)

It was undisputed that Sgt. Scogmanillo approached § 87(2)(b) to address the volume of music playing at his house, that the music was immediately turned off, and that § 87(2)(b) refused to provide his ID to Sgt. Scogmanillo when initially asked to provide it. It was also undisputed that Lieutenant Sample physically intervened, obtained § 87(2)(b) ID, and decided to issue § 87(2)(b) a summons.

§ 87(2)(b) (BR 37 and BR 38) consistently stated that on September 2, 2019, beginning at approximately 10:00 a.m., he hosted a small gathering in the driveway to his private home, located at § 87(2)(b) for friends and neighbors to celebrate Labor Day and the West Indian Parade. § 87(2)(b) a DJ, was playing music from a laptop attached to speakers, set up at in the middle of the driveway. Many other households had erected similar set-ups along Rockaway Parkway and were playing music at a similar level to that of § 87(2)(b).

At approximately 6:45 p.m. as he was beginning to clean up, § 87(2)(b) noticed that the music had been turned off. § 87(2)(b) turned and saw § 87(2)(b) speaking with Sgt. Scogmanillo, who was saying, “You guys are playing this obscene music too loud.” § 87(2)(b) approached, and Sgt. Scogmanillo immediately asked for his ID. § 87(2)(b) did not understand why Sgt. Scogmanillo wanted his ID and asked why. Sgt. Scogmanillo did not explain and requested § 87(2)(b) ID a second time, to which § 87(2)(b) replied, “You want the music off? It’s off. You want the music down? It’s down. But I’m not giving you my ID.”

When § 87(2)(b) continued to refuse to provide his ID, Lieutenant Sample, who had still been in the general area, took § 87(2)(b) to the side of his house, asked him for his ID, and told him that everything would be fine once Sgt. Scogmanillo ran his information. § 87(2)(b) gave his ID to Lieutenant Sample, who then approached Sgt. Scogmanillo and gave the ID to him. A few minutes later, Inspector Colon and Det. Barker arrived at the location and spoke with Sgt. Scogmanillo.

§ 87(2)(b) was upset that the situation had escalated, so he walked away from where the officers were talking. Sgt. Scogmanillo followed § 87(2)(b) along with Det. Baker, PO Colon, PO Viti, and PO Collado. § 87(2)(b) neighbor, § 87(2)(b) ran up to § 87(2)(b) hugged him around the middle, and told the officers to leave him alone. At the same time, Sgt. Scogmanillo told § 87(2)(b) “Put your hands behind your back. You’re under arrest.”

Once § 87(2)(b) was released from custody the next morning, he learned that Sgt. Scogmanillo had taken some cords connected to the speakers. § 87(2)(b) went to the 67th Precinct later that day to claim the cords, but they were not vouchered in the system and the desk officer was unable to locate them, noting that if they were seized as arrest evidence, § 87(2)(b) was unlikely to be able to retrieve them. § 87(2)(b) was not ever able to claim the cables.

§ 87(2)(b) statement (BR 39) was generally consistent with that of § 87(2)(b). As soon as § 87(2)(b) saw Sgt. Scogmanillo requested § 87(2)(b) ID, and § 87(2)(b) explained that he was visiting from Trinidad and did not have a valid United States ID, at which point § 87(2)(b) approached and asked what was going on. Sgt. Scogmanillo asked § 87(2)(b) for his ID, and he refused to provide it. Lieutenant Sample approached § 87(2)(b) took him to the side, and § 87(2)(b) gave his ID to Lieutenant Sample who, in turn, gave the ID to Sgt. Scogmanillo. Lieutenant Sample and Sgt. Scogmanillo spoke a few feet away from § 87(2)(b) who was not able to clearly hear the conversation except for Lieutenant Sample telling Sgt. Scogmanillo, “Drop it.” After speaking with Lieutenant Sample, Sgt. Scogmanillo approached § 87(2)(b) again and told him that he needed to go to the precinct.

§ 87(2)(b) statements (BR 40 and BR 41) were generally consistent with those of § 87(2)(b).

§ 87(2)(b) and § 87(2)(b) with the following exceptions noted. § 87(2)(b) was inside of the house when she noticed that the music had been turned off. After Lieutenant Sample gave § 87(2)(b) ID to Sgt. Scogmanillo, § 87(2)(b) thought that the situation was under control, so she started to walk further down the driveway with § 87(2)(b) so she could speak with him and calm him down. As they were walking, Sgt. Scogmanillo approached her and § 87(2)(b) who kept walking toward the house. § 87(2)(b) asked Sgt. Scogmanillo what was going on and what he was doing with the equipment since the music was off, and Sgt. Scogmanillo, who had paused to inspect the audio equipment, told her that he needed to speak with § 87(2)(b).

§ 87(2)(b) (BR 42) and § 87(2)(b) (BR 43) statements were also consistent with those of § 87(2)(b) and § 87(2)(b). § 87(2)(b) turned off the music as soon as Sgt. Scogmanillo approached him. § 87(2)(b) refused to provide his ID to Sgt. Scogmanillo but eventually gave it to Lieutenant Sample.

§ 87(2)(b), § 87(2)(b) and § 87(2)(b) did not provide statements to the investigation. Sgt. Scogmanillo (BR 44) stated that when he was approximately one block away from § 87(2)(b) house, he heard very loud music coming from that general vicinity. Upon approach, he observed that, while there were numerous households playing music, the volume of the music coming from § 87(2)(b) was “obscene.” Sgt. Scogmanillo approached § 87(2)(b) and made a motion for him to turn off the music, which § 87(2)(b) did. When § 87(2)(b) approached to see what was going on, Sgt. Scogmanillo asked him for his ID because the music had been very loud. § 87(2)(b) refused despite Sgt. Scogmanillo asking at least a dozen times. § 87(2)(b) told Sgt. Scogmanillo, “I turned the music off. I’m not giving you my ID.” Sgt. Scogmanillo did not ever issue § 87(2)(b) or § 87(2)(b) a warning to not turn the music back on because this is something that he would have done after reviewing § 87(2)(b) ID.

Although Sgt. Scogmanillo could have used his discretion to not issue § 87(2)(b) a summons, he felt that because the music had been so loud and because § 87(2)(b) had refused to provide his ID, § 87(2)(b) needed to “answer for the [noise] violation.” Sgt. Scogmanillo explained that even though the music had been turned off, the simple fact that it had been loud meant that § 87(2)(b) had committed a violation and, because he had refused to provide ID, he was also under arrest for OGA.

Sgt. Scogmanillo gestured to PO Viti to place § 87(2)(b) into custody, and PO Viti and PO Collado took § 87(2)(b) by the arms and put a handcuff on one of his wrists. Lieutenant Sample, whose presence Sgt. Scogmanillo had not previously noted, approached, told PO Viti and PO Collado to wait, and stepped between them and § 87(2)(b). When PO Viti told Lieutenant Sample that Sgt. Scogmanillo had directed him to arrest § 87(2)(b), Lieutenant Sample told him, “I’m a lieutenant, and I’m telling you to take the handcuffs off him.” Sgt. Scogmanillo told Lieutenant Sample that § 87(2)(b) was under arrest, but Lieutenant Sample ignored him and walked with § 87(2)(b) back onto the driveway closer to the house. Lieutenant Sample and § 87(2)(b) spoke for a few minutes, § 87(2)(b) gave his ID to Lieutenant Sample, and Lieutenant Sample gave the ID to Sgt. Scogmanillo.

Once he received the ID from Lieutenant Sample, Sgt. Scogmanillo called his supervisor, Inspector Colon, and requested that he respond to the location because Lieutenant Sample was interfering with his arrest. (Sgt. Scogmanillo explained that by stepping in between PO Viti, PO Collado, and § 87(2)(b), Lieutenant Sample was committing the offense of “resisting arrest,” and, had he not been in uniform, Lieutenant Sample would have been arrested. Sgt. Scogmanillo added that because Lieutenant Sample outranked him, he was required to obey his commands, but only the lawful ones. Sgt. Scogmanillo considered Lieutenant Sample’s interference with his arrest unlawful, so he contacted his supervisor to intervene.)

When Inspector Colon arrived at the location, Sgt. Scogmanillo told him that he had initially approached because of the noise, had requested § 87(2)(b) ID, and § 87(2)(b) refused. After Sgt. Scogmanillo directed PO Viti and PO Collado to arrest § 87(2)(b), Lieutenant Sample interfered by telling PO Viti and PO Colon to remove the handcuffs and then obtained § 87(2)(b).

ID. Having heard Sgt. Scogmanillo's account of what happened, Inspector Colon told him to follow procedure and take § 87(2)(b) to the stationhouse to process the arrest. Sgt. Scogmanillo added that while Inspector Colon approved of him moving forward with the arrest, it was his decision to follow through with arresting § 87(2)(b) and not issue him a summons.

When § 87(2)(b) was finally taken into custody, Sgt. Scogmanillo took a cord from the turntable area to prevent the people remaining at the location from turning the music back on. Sgt. Scogmanillo did this because he did not believe that the people present were going to comply with lawful orders to keep the music off. Sgt. Scogmanillo could not recall if he gave any warning about turning the music back on, and he could not recall what happened to the cord he took.

Lieutenant Sample (**BR 45**), who was in the area to inspect parade floats, observed that almost every house along Rockaway Parkway had speakers set up, and that there was nothing in particular that differentiated the volume of noise coming from § 87(2)(b) house from these other homes. Lieutenant Sample had not received and did not observe anything that he deemed to be excessive. A few moments after Sgt. Scogmanillo arrived, Lieutenant Sample observed § 87(2)(b) and Sgt. Scogmanillo speaking loudly to each other. It appeared to Lieutenant Sample that § 87(2)(b) felt that Sgt. Scogmanillo was targeting him unfairly because there were other houses playing music at the same volume. A few minutes later, Lieutenant Sample heard Sgt. Scogmanillo tell § 87(2)(b) that he was under arrest. While he did not hear Sgt. Scogmanillo say why § 87(2)(b) was under arrest, Lieutenant Sample knew it had something to do with the sound system and noise level.

Lieutenant Sample decided to intervene to deescalate the situation because he had established a rapport with § 87(2)(b) during the day, so he positioned himself between the other officers, and heard Sgt. Scogmanillo say that § 87(2)(b) had refused to provide his ID. Lieutenant Sample told Sgt. Scogmanillo that he would talk to § 87(2)(b) and get his ID, told the officers present that § 87(2)(b) was not under arrest, and instructed PO Viti and PO Collado to remove the handcuffs. Lieutenant Sample walked down the driveway with § 87(2)(b) obtained his ID, and decided that he should be released with a summons for the noise violation. Lieutenant Sample gave the ID to Sgt. Scogmanillo and told him to release § 87(2)(b) with only a summons. Sgt. Scogmanillo replied that he was "under strict orders from his commanding officer to make arrests." Lieutenant Sample was unaware of any such orders, but, as he and Sgt. Scogmanillo were from different commands, he would not have necessarily been aware of command level orders. Lieutenant Sample told Sgt. Scogmanillo to contact his supervising officer if he wanted, but that until a supervisor arrived and made a decision outranking his, § 87(2)(b) would not be arrested and would only be issued a summons, at which point Sgt. Scogmanillo contacted Inspector Colon.

When Inspector Colon arrived a few minutes later, Lieutenant Sample spoke with him alone and explained that he had intervened and that it was his decision that § 87(2)(b) should be released with a summons. Sgt. Scogmanillo and Inspector Colon then spoke alone for a few minutes, but Lieutenant Sample could not hear what they were saying. After their conversation, Inspector Colon approached Lieutenant Sample and told him that he had approved § 87(2)(b) arrest but did not provide any details regarding his decision. Lieutenant Sample then immediately left the location to resume inspecting the parade floats.

Inspector Colon (**BR 46**) stated that there were no command level instructions to effect arrests and that he did not issue, nor was he aware of, any special instructions about dealing with noise complaints. Prior to patrol, Inspector Colon had not given Sgt. Scogmanillo any instructions about what enforcement actions he should take that day.

Sgt. Scogmanillo went over the radio and requested that Inspector Colon respond to the location but did not provide any additional information. Upon arrival, Sgt. Scogmanillo told him that Lieutenant Sample had intervened with an arrest that he had directed. Inspector Colon asked Sgt. Scogmanillo if he had probable cause for the arrest, and Sgt. Scogmanillo said that he did. Inspector Colon did not learn what the arrest was for or what probable cause Sgt. Scogmanillo possessed. Having confirmed that probable cause existed, Inspector Colon told Sgt. Scogmanillo, "If you have PC for the arrest, make the arrest."

At some point after he spoke with Sgt. Scogmanillo, Lieutenant Sample told him that § 87(2)(b) had let him use his restroom. Inspector Colon could not recall if Lieutenant Sample ever explained to him his reason for interfering in the arrest or that he had wanted to release § 87(2)(b) with a summons, but he noted that simply allowing § 87(2)(b) to use his bathroom would not have been enough to supersede Sgt. Scogmanillo's probable cause, even though Inspector Colon was not sure what that probable cause had been.

Inspector Colon's impression of the situation was that he had been called to resolve a "misunderstanding" between Sgt. Scogmanillo and Lieutenant Sample regarding the arrest. Inspector Colon believed Sgt. Scogmanillo when he told him that he had probable cause because of Sgt. Scogmanillo's years of experience. Once he determined that there was probable cause and that Sgt. Scogmanillo could therefore go forward with the arrest, his participation in the incident was over.

PO Viti's statement (**BR 47**), was generally consistent with those of Sgt. Scogmanillo, Lieutenant Sample, and Inspector Colon with the following exceptions noted. PO Viti had not received, nor was he aware of, any instructions regarding noise complaints or about affecting arrests. PO Viti did not see whether § 87(2)(b) gave his ID to Lieutenant Sample, nor did he observe Lieutenant Sample give any instructions to Sgt. Scogmanillo about issuing § 87(2)(b) a summons. PO Viti did not know why Inspector Colon responded to the location, and, although he saw Inspector Colon speaking with Lieutenant Sample and Sgt. Scogmanillo, he could not hear what they were saying from where he was standing on the sidewalk. After he spoke with Inspector Colon, Sgt. Scogmanillo told PO Viti that § 87(2)(b) was under arrest, but he did not provide the specific reasons for the arrest.

Det. Baker's statement (**BR 48**) was also consistent with those of Sgt. Scogmanillo, Lieutenant Sample, Inspector Colon, and PO Viti with the following exceptions noted. Det. Baker did not know why Sgt. Scogmanillo requested that Inspector Colon respond to the location. Upon arrival, Sgt. Scogmanillo spoke with Inspector Colon, but Det. Baker could not hear what they were saying. Sgt. Scogmanillo then told Det. Baker that § 87(2)(b) was under arrest.

Body-worn camera footage from Sgt. Scogmanillo (**BR 02**, **BR 03**, and **BR 04**), PO Viti (**BR 08** and **BR 10**), PO Collado (**BR 05** and **BR 07**), PO Colon (**BR 11** and **BR 14**), PO Moya (**BR 15** and **BR 17**), and PO Orellana (**BR 18** and **BR 21**) and cell phone footage (**BR 22**, **BR 25**, **BR 26**, and **BR 28**) provided by § 87(2)(b) and § 87(2)(b) capture this portion of the incident.

In Sgt. Scogmanillo's body-worn camera footage (**BR 02** and **BR 04**), Sgt. Scogmanillo exits his vehicle, approaches § 87(2)(b) and, at 00:36 seconds, says, "The music is obscene. I need to see your identification." There is no music playing when Sgt. Scogmanillo says this, and the music never turns back on. At 00:42 seconds, § 87(2)(b) approaches, and Sgt. Scogmanillo immediately asks for his ID then asks if he is the owner of the home. Sgt. Scogmanillo repeatedly asks for § 87(2)(b) ID, and, at 1:11 minutes, tells him that he is going to issue him a summons. At 1:57 minutes, § 87(2)(b) says, "Are you asking me to turn it down?" Sgt. Scogmanillo answers, "No. I'm asking you to turn it off, and I need your identification. You're getting a summons for the noise." § 87(2)(b) says, "We're going to turn it off. I'm not giving you anything." Sgt. Scogmanillo then signals for PO Viti and PO Collado to arrest § 87(2)(b).

At 2:10 minutes, Lieutenant Sample approaches and stands between PO Viti, PO Collado, and § 87(2)(b) Scogmanillo to Lieutenant Sample, "He's under," and Lieutenant Sample replies, "Let me speak to him first!" At 2:25 minutes, Sgt. Scogmanillo walks toward the sidewalk and says, "We're not having this. He's [Lieutenant Sample] not overriding me here, man." Beginning at 2:35 minutes, Sgt. Scogmanillo goes over the radio and requests that his supervisor respond to § 87(2)(b). At 3:05 minutes, PO Viti approaches Sgt. Scogmanillo and tells him, "The Lieutenant just ordered me to take the cuffs off him." Sgt. Scogmanillo replies, "That's okay. Back off. The CO's on the way." At 3:25 minutes, Sgt. Scogmanillo repeats, "He ain't overriding me." At 3:46 minutes, Lieutenant Sample hands Sgt. Scogmanillo § 87(2)(b) ID, and Sgt. Scogmanillo says, "He's coming with me. I'm gonna shut this off. Come here a second. Lieu, please." Sgt. Scogmanillo then turns off his body-worn camera.

Sgt. Scogmanillo's body-worn camera footage (**BR 03** and **BR 04**) resumes approximately three minutes later with no audio. Lieutenant Sample is standing with Inspector Colon in the street to the side of § 87(2)(b) house. At 00:07 seconds, Sgt. Scogmanillo approaches Inspector Colon, who makes a circle gesture with his hand. Sgt. Scogmanillo then walks up to § 87(2)(b) driveway, approaches § 87(2)(b) and takes his arms to place him into custody.

PO Collado's body-worn camera footage (**BR 05** and **BR 07**) is consistent with that of Sgt. Scogmanillo and captures, at 3:32 minutes, Lieutenant Sample walking toward the area where Sgt. Scogmanillo is standing with § 87(2)(b) ID in his hand saying, "He's writing a summons."

§ 87(2)(b) was arrested (**BR 35**) for resisting arrest, obstruction of governmental administration, criminal possession of a weapon, and unreasonable noise. The criminal possession of a weapon charge is in regard to a set of brass knuckles which were found during a search incident to arrest at the 67th Precinct stationhouse.

Property vouchers (**BR 49**) for § 87(2)(b) arrest do not include the cord that was confiscated by Sgt. Scogmanillo.

It was undisputed that when Sgt. Scogmanillo approached the residence, § 87(2)(b) immediately turned off the music and did not ever turn it back on. Sgt. Scogmanillo did not issue § 87(2)(b) any warnings or give him any instructions about turning the music back on. It was also undisputed that § 87(2)(b) refused to provide his ID to Sgt. Scogmanillo despite repeated requests to do so, and Sgt. Scogmanillo subsequently arrested him for OGA and for the noise violation. Lieutenant Sample intervened, obtained § 87(2)(b) ID, and decided to release him with a summons. Sgt. Scogmanillo disagreed with Lieutenant Sample and requested that Inspector Colon respond to resolve the situation. While Sgt. Scogmanillo stated that he explained the situation to Inspector Colon, and Lieutenant Sample told him that he had decided to release § 87(2)(b) with a summons, Inspector Colon stated that he only inquired as to whether Sgt. Scogmanillo had probable cause for the arrest, and trusted Sgt. Scogmanillo's judgement when he said that he did. Having received approval from Inspector Colon, Sgt. Scogmanillo decided to proceed with the arrest. Sgt. Scogmanillo confiscated a cord from the audio equipment, but no voucher for the cord was found. It was also undisputed by all parties that the brass knuckles noted on § 87(2)(b) arrest report were only recovered at the stationhouse.

Patrol Guide procedure 214-23 (**BR 50**), defines unreasonable noise as any excessive or unusually loud sound that disturbs the peace, comfort or repose of a reasonable person of normal sensitivities, or injuries or endangers the health or safety of a reasonable person of normal sensitivities, or damages property or business. When a uniformed member of service hears, observes, or received a complaint of unreasonable noise: 1) Interview all complainants/violators about noise. 2) Determine if the noise is unreasonable. 3) Attempt to correct the condition by warning violator. 4) If unable to correct the condition and violator is eligible, issue summons.

NY Penal Law Section 195.05 (**BR 51**) states that a person is guilty of obstructing governmental administration when he intentionally obstructs, impairs, or perverts the administration of law of other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference.

In People v. Perez, 47 A.D.3d 1192 (2008) (**BR 52**), the court held that officers, when investigating loud noise emanating from an apartment, did not have reasonable cause to believe the defendant committed an offense [OGA] in their presence only because he did not respond to the officers' request for identification or to completely open his door.

§ 87(2)(g) the noise condition was immediately corrected upon Sgt. Scogmanillo's approach, § 87(2)(g)

Moreover, Sgt. Scogmanillo chose to escalate the situation by requesting that Inspector Colon overrule Lieutenant Sample's decision to release § 87(2)(b) with a summons for the noise and instead arrest him for OGA, § 87(2)(g)

§ 87(2)(g)

Although it was undisputed that Lieutenant Sample told Inspector Colon that he wanted to release § 87(2)(b) with a summons and that Sgt. Scogmanillo believed he had probable cause to arrest § 87(2)(b) the investigation was unable to determine what specific information regarding events prior to his arrival were conveyed to Inspector Colon. § 87(2)(g)

While Sgt. Scogmanillo acknowledged taking a cord from the location, § 87(2)(b) was unable to retrieve the cord, no property voucher was prepared for the cord. § 87(2)(g)

Allegation (B) Physical Force: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Police Officer Joseph Viti used physical force against § 87(2)(b)

Allegation (C) Physical Force: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Police Officer Elvis Collado used physical force against § 87(2)(b)

Allegation (D) Discourtesy: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Police Officer Joseph Viti spoke discourteously to § 87(2)(b)

§ 87(2)(b) (BR 37 and BR 38), § 87(2)(b) (BR 40 and BR 41), § 87(2)(b) (BR 39), § 87(2)(b) (BR 42), and § 87(2)(b) (BR 43) did not describe this portion of the incident. § 87(2)(b) and § 87(2)(b) did not provide statements to the investigation.

In PO Collado's body-worn camera footage (BR 05 and BR 07), beginning at 1:57 minutes, Sgt. Scogmanillo signals for PO Viti and PO Collado to arrest § 87(2)(b). PO Viti takes § 87(2)(b) right bicep and pulls § 87(2)(b) arm behind his back while also pushing him forward toward a fence. § 87(2)(b) has his arms extended in front of him, and PO Collado takes § 87(2)(b) left bicep. PO Collado also turns toward the fence, and only § 87(2)(b) upper left bicep is visible in the frame. At 2:00 minutes, PO Viti says, "Whoa! Whoa! Whoa! Don't fucking resist! Don't fucking resist me!" It is not clear from the video what § 87(2)(b) is doing with his arms or the rest of his body. At 2:02 minutes, Lieutenant Sample, from outside of the frame, says, "Wait, wait, wait! Relax. Let me speak to him!" § 87(2)(b) turns his head and upper shoulders to his right and away from PO Viti. At 2:23 minutes, Lieutenant Sample tells PO Viti to "take it [the handcuff] off."

PO Viti's body-worn camera footage (BR 08 and BR 10) was consistent with that of § 87(2)(b) and does not capture any of § 87(2)(b) additional movements.

PO Viti (BR 47) stated that once Sgt. Scogmanillo told him and PO Collado to arrest § 87(2)(b) he took one of § 87(2)(b) wrists. § 87(2)(b) tensed his arms and, instead of allowing PO Viti to put his arms behind his back, pulled his arms forward away from PO Viti. PO Viti then told § 87(2)(b) "Don't fucking resist me." PO Viti explained that he said this in the heat of the moment because he felt § 87(2)(b) pull away from him, it was a "scary" situation, and that he did not mean in a pejorative manner.

Sgt. Scogmanillo's statement (BR 44) was consistent with that of PO Viti. § 87(2)(b) seemed surprised when PO Viti and PO Collado took his arms and did not know why the officers were handcuffing him. § 87(2)(b) was resisting slightly by tensing his body, but he was not physically doing anything that would have constituted a charge of resisting arrest.

Although § 87(2)(b) did not describe this portion of the incident, body-worn camera footage captures § 87(2)(b) with his arms extended in front of him while PO Viti and PO Collado attempt to handcuff him after being instructed to do so by Sgt. Scogmanillo, and turning his upper body away from PO Viti as he tried to handcuff him, which is consistent with officer statements.

Patrol Guide procedure 221-01 (BR 53) states that force may be used when it is reasonable to

ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person into custody or to prevent escape from custody.

§ 87(2)(g) Sgt. Scogmanillo instructed PO Viti and PO Collado to arrest § 87(2)(b) § 87(2)(g)

Patrol Guide Procedure 200-02 (BR 54) states that the department is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect

In DAO-DCT Case Number: 2017-17276 (BR 55) the court held that language which would ordinarily be inappropriate in dealing with civilians may be excused in the course of a violent and stressful confrontation.

§ 87(2)(g) the situation escalated quickly from a noise complaint to an arrest, and that § 87(2)(b) had refused to comply with providing his ID and did not immediately allow PO Viti and PO Collado to pull his arms behind his back, § 87(2)(g)

Allegation (F) Physical Force: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Detective Devin Baker slammed § 87(2)(b) against a wall.

Allegation (G) Physical Force: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Detective Devin Baker slammed § 87(2)(b) against the ground.

Allegation (H) Physical Force: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Detective Devin Baker restricted § 87(2)(b) breathing.

Allegation (I) Physical Force: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Detective Devin Baker used a chokehold against § 87(2)(b)

Allegation (J) Physical Force: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Detective Devin Baker used physical force against § 87(2)(b)

Allegation (K) Physical Force: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Police Officer Joseph Viti used physical force against § 87(2)(b)

Allegation (L) Physical Force: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Police Officer Elvis Collado used physical force against § 87(2)(b)

Allegation (M) Physical Force: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Police Officer Jonathan Colon used physical force against § 87(2)(b)

Allegation (N) Discourtesy: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Detective Devin Baker spoke discourteously to § 87(2)(b)

Allegation (O) Physical Force: On September 2, 2019, in front of § 87(2)(b) in Brooklyn, Sergeant Carl Scogmanillo used physical force against § 87(2)(b)

§ 87(2)(b) consistently stated (BR 37 and BR 38) that after Sgt. Scogmanillo told him that he was under arrest and to put his hands behind his back, he turned slightly to the back entrance of the house because he was confused and thought that he was going to be given a summons and not arrested. As soon as he turned, Det. Baker and PO Viti grabbed § 87(2)(b) by the upper back and pushed him face-first against the wall. § 87(2)(b) felt his face hit the wall and may have tensed his arms to protect himself from the sudden force, but he did not specifically recall doing this.

Almost immediately, Det. Baker threw him face-down to the ground. There, § 87(2)(b) felt Det. Baker lying with his full body weight spread out on his back, which made it difficult for him to breathe. PO Collado was holding § 87(2)(b) legs, PO Colon was holding § 87(2)(b) left arm, and PO Viti was holding his right arm. § 87(2)(b) may have been tensing his arms and legs against the officers as a means of protecting himself, but because of the speed with which everything happened, he could not recall doing this.

Det. Baker, with his weight still bearing down on § 87(2)(b) back, hooked one of his arms

around § 87(2)(b) neck with his forearm against § 87(2)(b) windpipe. Det. Barker then raised his forearm up against § 87(2)(b) windpipe, lifted § 87(2)(b) head a few inches up from the ground, and punched § 87(2)(b) two to three times on the side of his face with his other hand, at which time he released the pressure on § 87(2)(b) windpipe. Det. Baker then shifted his weight from § 87(2)(b) back to his lower back/buttocks area and straddled § 87(2)(b) torso with one leg on either side of his chest. Det. Baker put both of his hands on § 87(2)(b) head, neck, and upper back area and applied downward pressure. Other officers placed him into handcuffs, but this did not result in pain or difficulty breathing. Officers may have been asking § 87(2)(b) for his hands, but his arms were pinned underneath him, and he was not able to move them because of the downward pressure Det. Baker was applying to his back area and because PO Colon and PO Viti had hold of his arms.

While on the ground, § 87(2)(b) heard § 87(2)(b) yelling at officers to leave him alone. § 87(2)(b) looked up and saw Sgt. Scogmanillo, who was approximately four to five feet away from him, take § 87(2)(b) by the wrists and hold her still where she was standing. § 87(2)(b) did not see what had happened prior to Sgt. Scogmanillo taking § 87(2)(b) wrists. § 87(2)(b) did not see if Sgt. Scogmanillo pushed or pulled § 87(2)(b).

After a few moments, officers were able to place § 87(2)(b) into handcuffs, and PO Viti and PO Colon lifted him into a standing position by the upper arms. Once he was in a standing position, § 87(2)(b) realized that he had sustained several injuries including a small cut under his left eye, a swollen nose, cuts to his nose and lips, bruises and swelling to both of his hands along the pinky finger down the palm of his hand, and an approximately two-inch by two-inch scrape to his left knee, which was actively bleeding. § 87(2)(b) also felt pain in his shoulders from where the officers had been pulling his arms and in his chest from where Det. Baker had been applying pressure with his full body weight.

§ 87(2)(b) statement (**BR 40** and **BR 41**) was generally consistent with that of § 87(2)(b). As she was asking Sgt. Scogmanillo what was going on, Det. Baker walked past her toward § 87(2)(b) followed almost immediately by Sgt. Scogmanillo. § 87(2)(b) turned around and saw that Det. Baker, who was directly behind § 87(2)(b) and PO Viti and PO Colon, who were on either side of § 87(2)(b) were holding § 87(2)(b) by the upper body and pushing him up against the exterior wall of the house. § 87(2)(b) who was approximately two to three feet away from them, had not heard any of the officers say anything to § 87(2)(b) prior to putting him against the wall, and she did not see what occurred prior to § 87(2)(b) being up against the wall or how he came to be against the wall.

Just after she turned toward § 87(2)(b) Sgt. Scogmanillo, without any prior verbal instructions to back away, grabbed both of her wrists with both of his hands and pulled her approximately one foot away from § 87(2)(b) telling her that he did not want her near § 87(2)(b) and the other officers. As Sgt. Scogmanillo was moving her, Det. Baker, PO Viti, and PO Colon took § 87(2)(b) to the ground, but § 87(2)(b) could not see how they did this because Sgt. Scogmanillo was obstructing her view. However, once he was on the ground, § 87(2)(b) saw Det. Baker straddle § 87(2)(b) with one leg on either side of his torso and two other officers holding § 87(2)(b) arms. § 87(2)(b) could not clearly see the contact between Det. Baker, the other officers, and § 87(2)(b) while § 87(2)(b) was on the ground because Sgt. Scogmanillo was still in front of her but was able to see the officers lift him into a standing position once he was handcuffed.

§ 87(2)(b) (**BR 39**), § 87(2)(b) (**BR 43**), and § 87(2)(b) (**BR 42**) provided statements generally consistent with those of § 87(2)(b) and § 87(2)(b). They both observed Det. Baker push § 87(2)(b) up against the wall and then take him down to the ground, but, because there were other officers between them and § 87(2)(b) they did not observe what occurred immediately before Det. Baker pushed him against the wall, how he was pushed against the wall, what happened prior to Det. Baker taking him to the ground, or how he was taken to the ground. § 87(2)(b) § 87(2)(b) and § 87(2)(b) did not see Det. Baker punch § 87(2)(b) in the face. § 87(2)(b) saw one officer, she was not sure which one, with his knee on § 87(2)(b) back as they were trying to handcuff him, and § 87(2)(b).

§ 87(2)(b) also saw officers applying pressure to § 87(2)(b) back while he was on the ground. § 87(2)(b) and § 87(2)(b) did not provide statements to the investigation. § 87(2)(b) visited his primary care physician, § 87(2)(b) (BR 56). § 87(2)(b) reported to § 87(2)(b), he had been assaulted by police officers in his driveway and that he had been punched in the face, pushed against a wall, and thrown to the ground. § 87(2)(b) complained of pain to his left and right wrists and chest, and he reported having difficulty breathing after he was thrown to the ground. X-Rays to § 87(2)(b) wrists showed no fractures and a CT scan of his chest was clear.

Body-worn camera from Sgt. Scogmanillo (BR 03 and BR 04), PO Collado (BR 06 and BR 07), PO Colon (BR 12 and BR 14), cell phone footage (BR 22 and BR 27), and security footage (BR 30, BR 31, and BR 34) capture this portion of the incident. These videos were combined into one to show the force from multiple angles at the same time (BR 57).

In Sgt. Scogmanillo's body-worn camera, beginning at 00:15 seconds, Sgt. Scogmanillo walks past § 87(2)(b) and § 87(2)(b) and takes § 87(2)(b) left arm at the wrist. § 87(2)(b) is stationary and does not pull his arm away from Sgt. Scogmanillo. At 00:23 seconds, Det. Baker wraps his left arms around § 87(2)(b) upper torso and arm while Sgt. Scogmanillo still has hold of § 87(2)(b) left wrist. Det. Baker pushes § 87(2)(b) up against the wall. At 00:27 seconds, Sgt. Scogmanillo turns away from § 87(2)(b) and takes § 87(2)(b) right and left wrists in his hands and walks with her back against the opposite wall where he continues to hold her until 00:45 seconds. Sgt. Scogmanillo's body-worn camera does not capture any additional force.

In PO Colon's body-worn camera, at 00:32 seconds, § 87(2)(b) is standing stationary opposite Sgt. Scogmanillo, who is holding his left wrist. § 87(2)(b) upper body is turned toward the left and he is looking down the driveway toward Det. Baker. At 00:33 seconds, Det. Baker stands behind § 87(2)(b) wraps his arms around § 87(2)(b) upper torso and arms, turns § 87(2)(b) to the right, and pushes him against the wall. It is not clear what parts of § 87(2)(b) body make contact with the wall. PO Viti is to § 87(2)(b) and Det. Baker's right, and PO Colon is behind Det. Baker to his right. At 00:35 seconds, Det. Baker lifts § 87(2)(b) up a few inches while still holding him, turns to the left, and brings § 87(2)(b) to the ground such that § 87(2)(b) is face down and Det. Baker is lying flat on top of him. At 00:38 seconds, PO Viti also falls to the ground, landing on his right knee a few feet away from Det. Baker and § 87(2)(b) PO Colon, facing toward § 87(2)(b) feet, attempts to take § 87(2)(b) left arm, which is bent at the elbow with his hand under his chest. As PO Colon tries to pull § 87(2)(b) left hand from under his torso, at 00:45 seconds, Det. Baker tells § 87(2)(b) "Give me your fucking hand." It is not clear where § 87(2)(b) right hand is. At 00:52 seconds, PO Viti is putting a handcuff on § 87(2)(b) right wrist. At 00:55 seconds, PO Colon tells Det. Baker, "He's good. He's good, Baker." PO Colon and PO Viti then finish handcuffing § 87(2)(b) and then lift him into a standing position.

In PO Collado's body-worn camera footage, at 00:18 seconds, Det. Baker wraps his arms around § 87(2)(b) from behind with both his arms, lifts § 87(2)(b) up slightly, turns with § 87(2)(b) in his arms to the right, and pushes § 87(2)(b) up against the wall. At 00:20 seconds, PO Viti and PO Colon, who are in front of PO Collado, move forward as Det. Baker and § 87(2)(b) go to the ground. It is not clear how Det. Baker takes § 87(2)(b) to the ground. At 00:23 seconds, PO Collado is by § 87(2)(b) feet, and Det. Baker is directly on top of § 87(2)(b) with one leg on either side of his torso. PO Viti is on the right with his hands by § 87(2)(b) mid-chest area, and PO Colon is on § 87(2)(b) left facing toward PO Collado. The camera then focuses on § 87(2)(b) legs, which remain still. Det. Baker continues to lean forward over § 87(2)(b) with both his legs on either side of § 87(2)(b) legs until 00:39 seconds, at which point he stands up.

Cell phone footage of the incident captures Sgt. Scogmanillo, Det. Baker, PO Viti, PO Colon, and PO Collado approaching § 87(2)(b) from a window overlooking the front exterior of the home. The footage resumes capturing the incident from above at 2:39 minutes. Det. Baker is on top of § 87(2)(b) who is face down on the ground. PO Viti is to the right with his hands at § 87(2)(b) mid-torso area, and PO Colon is to the left. § 87(2)(b) left upper arm from the elbow to shoulder is

visible briefly at 2:40 minutes, and PO Colon moves to take it. From 2:41 minutes to 2:45 minutes, PO Viti and PO Colon each have their hands on either side of § 87(2)(b) torso by the elbow area. At the same time, Sgt. Scogmanillo has both of § 87(2)(b) wrists in his hands and is walking her away from the immediate area. At 2:45 minutes, Det. Baker, who is still on top of § 87(2)(b) raises his left arm and swiftly brings it down across where § 87(2)(b) head is located two times. At 2:51 minutes, PO Viti pulls § 87(2)(b) right arm from underneath him and puts a handcuff on his wrist, mirrored two seconds later by PO Colon on the left. At 2:53 minutes, Det. Baker balances his upper body weight on his right hand while on top of § 87(2)(b) leans back slightly so his weight is on his back legs, then moves his hands to § 87(2)(b) mid back area while PO Viti and PO Colon secure the handcuffs. At 3:02 minutes, Det. Baker stands up, and PO Viti and PO Colon left § 87(2)(b) into a standing position.

Security footage from the back of the driveway, from the beginning of the footage, captures § 87(2)(b) take approximately three steps back toward the wall as Sgt. Scogmanillo approaches him. The footage is taken at a distance, and the contact between Sgt. Scogmanillo and § 87(2)(b) is not clear. At 00:06 seconds, Det. Baker pushes § 87(2)(b) into the wall and then turns and takes him to the ground. § 87(2)(b) falls face-first to the ground, and Det. Baker is on top of him with his body flat along § 87(2)(b). Beginning at 00:08 seconds, Sgt. Scogmanillo takes § 87(2)(b) by the wrists and walks her away from § 87(2)(b) against the opposite wall and then further down the driveway. At 00:10 seconds, § 87(2)(b) right hand is briefly visible by his shoulder, and PO Viti immediately moves to that area. At 00:16 seconds, Det. Baker appears to strike the left side of § 87(2)(b) face with his left hand two times. At 00:21 seconds, PO Viti pulls § 87(2)(b) right arm from underneath where § 87(2)(b) is lying on the ground.

The investigation created clips from the videos discussed above and combined them into one video to show the force from multiple angles (**BR 57**). There is no audio for this compilation.

Det. Baker (**BR 48**) stated that Sgt. Scogmanillo told him that § 87(2)(b) was under arrest but did not explain why or elaborate on what had happened prior to him and Inspector Colon arriving at the location. Det. Baker had not heard any conversation between Sgt. Scogmanillo, Inspector Colon, or Lieutenant Sample, and did not discuss the situation with any of the other officers present. Det. Baker followed Sgt. Scogmanillo onto the driveway, and Sgt. Scogmanillo told § 87(2)(b) that he was under arrest. Sgt. Scogmanillo grabbed one of § 87(2)(b) arms, and § 87(2)(b) pulled his arm away, turned, and started to walk quickly away from the officers, which Det. Baker considered to be resisting arrest.

Because he tried to flee, Det. Baker grabbed § 87(2)(b) and pushed him up against a wall to his right. § 87(2)(b) tried to “pull away” from Det. Baker. When asked to explain how § 87(2)(b) was doing this, Det. Baker said, “I don’t know how to explain it. He pulled away enough that when I tried to pull him down, one of my other fellow cops fell.” Det. Baker did not know which officer fell or what movements caused that officer to fall, just that the officer fell to his buttocks. Because § 87(2)(b) was “actively resisting” by pulling away when Det. Baker had him against the wall, Det. Baker decided to use the “seatbelt maneuver,” a tactic he learned in the Police Academy that involves placing a person in a bearhug-like position to immobilize them, to take § 87(2)(b) to the ground. From behind, Det. Baker wrapped his arms around § 87(2)(b) torso and upper body, rendering § 87(2)(b) upper body immobile, and then pulled § 87(2)(b) down to the ground.

Once on the ground, § 87(2)(b) was lying on his side and Det. Baker was lying on top of him. Det. Baker stated that he did not intentionally apply body pressure to § 87(2)(b) chest with his body, but that some of his weight did fall onto § 87(2)(b) torso while he was trying to handcuff him. § 87(2)(b) was moving his arms and hands, which Det. Baker interpreted as “combative.” When asked where § 87(2)(b) hands were, Det. Baker said, “They were moving all over the place. They were underneath him. They were out and around.” Det. Baker thought that § 87(2)(b) might try to hit him or reach for his firearm, so he hit § 87(2)(b) in the head one to two times to gain his compliance because he was “getting hit.” Det. Baker was unable to describe where or how § 87(2)(b) was hitting him but reiterated that he was moving his arms and resisting being placed into

handcuffs. Det. Baker added that he thought that § 87(2)(b) may have been in possession of a weapon because it was a holiday weekend, they were in East Flatbush, and § 87(2)(b) had been resisting being handcuffed, but he had made no specific observations that led to this belief. Det. Baker did not intentionally seek out to strike § 87(2)(b) face and only hit him there because it was the easiest part of his body to reach.

Det. Baker viewed PO Colon's body-worn camera footage of the incident, and clarified that § 87(2)(b) right arm, which was not captured in the video, was the arm that was moving and hitting him. Det. Baker also viewed overhead cell phone footage of the incident, but he noted that the footage did not capture § 87(2)(b) movements, which occurred under him.

After striking § 87(2)(b) Det. Baker, with the assistance of PO Viti, PO Collado, and PO Colon, handcuffed § 87(2)(b) and then lifted him into a standing position. Det. Baker did not see where Sgt. Scogmanillo went after § 87(2)(b) had pulled away from him and did not observe any contact between Sgt. Scogmanillo and § 87(2)(b). Det. Baker denied ever purposefully applying pressure to § 87(2)(b) back, chest, or head, and also denied ever placing his forearm under § 87(2)(b) neck and then applying upward pressure to his windpipe to lift his head, explaining that while on the ground his left arm was to his side and his right arm was above § 87(2)(b) head. Det. Baker did not observe any injuries on § 87(2)(b).

PO Viti's statement (**BR 47**) was generally consistent with that of Det. Baker with the following exceptions noted. PO Viti followed Sgt. Scogmanillo and Det. Baker onto the driveway to arrest § 87(2)(b) who was standing next to the side of the house. PO Viti went to take one of § 87(2)(b) arms when he felt someone, not § 87(2)(b) hit him on the shoulder and upper back. PO Viti lost his balance and fell to the ground. When he turned around, PO Viti saw Det. Baker lying on top of § 87(2)(b) who was face-down on the ground. PO Viti tried to help get § 87(2)(b) into custody by grabbing his arms, but it appeared to him that Det. Baker and other officers were in the process of handcuffing him and already had one wrist in a handcuff. However, PO Viti could not recall where § 87(2)(b) arms were positioned. PO Viti could not see if § 87(2)(b) was moving under Det. Baker, and he did not see Det. Baker moving on top of § 87(2)(b). PO Viti did not see § 87(2)(b) reach for Det. Baker's utility belt, hit Det. Baker, or otherwise resist being placed into handcuffs. PO Viti was unfamiliar with the seatbelt maneuver or any similar tactic, did not see Det. Baker take § 87(2)(b) to the ground, and did not observe Det. Baker strike § 87(2)(b) in the head.

Sgt. Scogmanillo's statement (**BR 44**) was generally consistent with those of Det. Baker and PO Viti with the following exceptions noted. Because Det. Baker was of a stature more similar to § 87(2)(b) than Sgt. Scogmanillo, Det. Baker physically took hold of § 87(2)(b) to place him into handcuffs. As Det. Baker was approaching § 87(2)(b) Sgt. Scogmanillo saw § 87(2)(b) also walking toward § 87(2)(b). Fearing that she might interfere with the arrest, Sgt. Scogmanillo took § 87(2)(b) by the wrists with both his hands and walked her over to the wall opposite where Det. Baker and § 87(2)(b) were. Sgt. Scogmanillo saw Det. Baker push § 87(2)(b) against the wall, lift him up from the ground, and then observed both Det. Baker and § 87(2)(b) fall to the ground.

Sgt. Scogmanillo held § 87(2)(b) against the wall opposite § 87(2)(b) until § 87(2)(b) was in handcuffs, so while he did not see § 87(2)(b) or Det. Baker's specific positions on the ground, he was able to see that Det. Baker was lying on top of § 87(2)(b). Sgt. Scogmanillo could not recall if he saw Det. Baker strike § 87(2)(b) in the face, but he was aware that it had happened. Sgt. Scogmanillo did not observe § 87(2)(b) struggling or resisting being handcuffed, and Det. Baker never explained what if any movements § 87(2)(b) was making or why he punched § 87(2)(b). Sgt. Scogmanillo did not ever see Det. Baker make contact with § 87(2)(b) windpipe.

Lieutenant Sample (**BR 45**) and Inspector Colon (**BR 46**) did not witness this portion of the incident.

Det. Baker prepared a TRI (**BR 58**), which was generally consistent with his statement. Det. Baker noted that he was 6'1" tall, 280 pounds, and 30 years old, and that § 87(2)(b) was 6' tall, 200 pounds, and 63 years old. § 87(2)(b) was "wrestling/grappling" and "pushing/shoving" and Det. Baker used a forcible takedown and hand-strikes for defense of self, defense of members of the public,

defense of other MOS, because of a fleeing suspect, and to overcome resistance or aggression. Det. Baker also noted that § 87(2)(b) was intoxicated, and he explained that he made this notation because he smelled alcohol on § 87(2)(b) observed beer bottles on the ground, people were holding cups, and because of § 87(2)(b) generally uncooperative demeanor.

According to the Medical Treatment of Prisoner report (BR 59), during the arrest § 87(2)(b) sustained abrasions to his right and left hands, left knee and lower lip. § 87(2)(b) also complained of pain to his right shoulder, chest, and the bridge of his nose. § 87(2)(b) refused medical attention.

It was undisputed that Sgt. Sgt Scogmanillo instructed Det. Baker (30 years old, 6'1" tall, 280 pounds) to arrest § 87(2)(b) (63 years old, 6' tall, 200 pounds) without informing him of the reason for the arrest and without providing additional information about what had occurred prior to Det. Baker's arrival. Based on consistent statements from § 87(2)(b) Sgt. Scogmanillo, and PO Viti and body-worn camera footage, cell phone footage, and security footage, the investigation determined that § 87(2)(b) was standing still and not walking away from officers when Sgt. Scogmanillo took hold of his wrist and that § 87(2)(b) did not pull his wrist away from Sgt. Scogmanillo or quickly try to flee from officers, despite Det. Baker's statements to the contrary. At the time Det. Baker grabbed § 87(2)(b) the only other civilian in the immediate area was § 87(2)(b) who Sgt. Scogmanillo promptly moved by taking her by the wrists, walking her toward the wall, and holding her in place. In addition to Sgt. Scogmanillo, PO Viti, PO Colon, and PO Collado were surrounding § 87(2)(b) and separating him from any of the other civilians present.

Although Det. Baker stated that he first pushed § 87(2)(b) up against the wall and then decided to use the seatbelt maneuver to take him to the ground after § 87(2)(b) "pulled away," Det. Baker was not able to describe how § 87(2)(b) was pulling away or otherwise resisting, and video footage captures Det. Baker grabbing § 87(2)(b) around the upper torso first, pushing § 87(2)(b) up against the wall, and then taking him down to the ground in one uninterrupted movement. Once on the ground, § 87(2)(b) and Det. Baker consistently stated that Det. Baker was lying on top of § 87(2)(b) with Det. Baker noting that, although unintentional, some of his body-weight did fall on § 87(2)(b) torso while he tried to handcuff § 87(2)(b). While Det. Baker further stated that he struck § 87(2)(b) in the head because § 87(2)(b) was "hitting" him with his right hand and that he was concerned that § 87(2)(b) might reach for his firearm, video footage from multiple angles does not capture § 87(2)(b) arms near Det. Baker's firearm or moving underneath him, and PO Viti, who was by § 87(2)(b) right side, did not see § 87(2)(b) pulling his arms away or hitting Det. Baker and is documented on video to be by § 87(2)(b) right arm prior to Det. Baker striking § 87(2)(b) in the head. Det. Baker denied applying pressure to § 87(2)(b) neck, this is not captured on video, and no other officers or civilians saw this occur.

It is undisputed that PO Viti and PO Colon pulled at § 87(2)(b) arms and hands to handcuff him, that PO Collado held down § 87(2)(b) feet, that while PO Viti, PO Colon, and Det. Baker tried to handcuff § 87(2)(b) Det. Baker said, "Give me your fucking hands, and that PO Viti and PO Colon lifted § 87(2)(b) into a standing position once he was handcuffed.

Patrol Guide procedure 221-01 (BR 53) states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody. In all circumstances, any application of force must be reasonable under the circumstances. In determining whether the use of force is reasonable, members of the service should consider the following: 1) The nature and severity of the crime/circumstances. 2) Actions taken by the subject. 3) Duration of the action. 4) Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders. 5) Whether the subject is actively resisting custody. 6) Whether the subject is attempting to evade arrest by flight. 7) Number of subjects in comparison to the number of MOS. 8) Size, age, and condition of the subject in comparison to the MOS. 9) Subject's violent history, if known. 10) Presence of hostile crowd or agitators. 11) Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence

While Det. Baker was not aware that § 87(2)(b) was being arrested for the non-violent

offenses of excessive noise and failure to provide his identification, Det. Baker did not witness any violent behavior on § 87(2)(b) part and had not made any observations suggesting he was in possession of a weapon. § 87(2)(b) was stationary and did not pull away or otherwise resist Sgt. Scogmanillo, and, with the exception of § 87(2)(b) who was removed from the immediate location by Sgt. Scogmanillo, there were no other civilians in the area of the driveway where § 87(2)(b) was arrested. Det. Baker, who was 30 years younger, slightly taller, and 80 pounds heavier than § 87(2)(b) was assisted by PO Viti, PO Colon, and PO Collado. Given the number of officers present, the fact that § 87(2)(b) was not fleeing or resisting, and Det. Baker's age and size compared to that of § 87(2)(b) § 87(2)(g)

Once on the ground, Det. Baker laid on top of § 87(2)(b) applying pressure to § 87(2)(b) torso, which, in turned, made it difficult for § 87(2)(b) to breathe. Det. Baker then struck § 87(2)(b) two times in the face. At the same time, PO Viti and PO Colon were on either side of § 87(2)(b) attempting to take hold of his hands and PO Collado was holding § 87(2)(b) legs in place. Although Det. Baker stated that § 87(2)(b) was hitting him and that he was concerned he might reach for his firearm on his right side, video of the incident does not capture this and PO Viti, who was on the right side, did not witness this. Given that there is no documented evidence that § 87(2)(b) was hitting Det. Baker, that PO Viti was on the right side of Det. Baker by his firearm, that three additional officers were assisting in placing him into custody, and Det. Baker's 80 pound weight and 30 year age advantage over § 87(2)(b) § 87(2)(g)

Although § 87(2)(b) alleged that Det. Baker applied pressure to his windpipe and lifted his head from the ground as he struck him in the face, there was no video evidence of this, and no officers or other civilians saw this occur. § 87(2)(g)

In DAO-DCT Case Number: 2017-17276 (BR 55) the court held that language which would ordinarily be inappropriate in dealing with civilians may be excused in the course of a violent and stressful confrontation.

It was undisputed that the situation was stressful and that, at the time Det. Baker told § 87(2)(b) "Give me you fucking hands," § 87(2)(g)

§ 87(2)(g) Det. Baker, PO Viti, PO Colon, and PO Collado were arresting § 87(2)(b) § 87(2)(g)

Allegation (P) Misleading Official Statement: On March 13, 2020, at 100 Church Street in Manhattan, Detective Devin Baker provided a misleading official statement to the CCRB.

During his CCRB interview (BR 48), Det. Baker read an entry from his memo book (BR 36) regarding this incident into the record, stating, "1845 – § 87(2)(b) assist on arrest." Supervising Investigator Roche responded, "It looks like this was written over another, um, entry?" Det. Baker replied, "No. It's just that my pen ran out of ink."

Det. Baker's memo book included numerous entries for the following days that he was

scheduled to work (BR 61). For each day, Det. Baker noted the day of the week and his tour, and the entry immediately after this documented the official start of his tour and his present for duty status.

A close up of the entry regarding the date of this incident (BR 62) appears to show that Det. Baker had adhered to his consistent practice of noting the assignment for the day with the first entry reading, "Monday 9/2/19 0810 + 1645." The entry immediately following that shows what appears to be one entry written on top of another. The entry on the bottom, which is partially obscured by the entry on top, reads, "0810: PFD @67 pct," which is consistent with Det. Baker's established pattern of documenting the time at which he started his tour. The entry written on top of that reads, "1845: § 87(2)(b) assists," and is inked heavier than other entries in the memo book.

Memo book entries from Sgt. Scogmanillo (BR 63), PO Viti (BR 64), and PO Collado (BR 65) note the incident location as § 87(2)(b). In Sgt. Scogmanillo's body-worn camera footage (BR 02 and BR 04), he requests that officers respond to § 87(2)(b) EVENT documentation of the incident (BR 66 and BR 67) and § 87(2)(b) arrest report (BR 35) also document the incident location as § 87(2)(b). The CCRB documentation for the incident, which was generated based on § 87(2)(b) complaint filed on September 12, 2019, lists the incident address as § 87(2)(b).

Based on Det. Baker's established pattern of documenting both his assignment and the time he was present for duty, and given that the incident location noted in his memo book correlates to the CCRB documentation of the incident and not any police documentation on the day of the incident, the investigation determined that the entry regarding this incident was written at a later date over an entry documenting Det. Baker's present for duty status. Furthermore, the investigation determined that Det. Baker was untruthful when he stated in his interview that he had not written over a prior entry and that his "pen ran out of ink."

Interim Order 30 (BR 68) defines a misleading official statement as a statement that is intended to misdirect the fact finder, and materially alter the narrative by altering and/or changing a member's prior statement or account when a member of service is confronted with independent evidence indicating that an event did not occur as initially described. It is prohibited for officers to intentionally make a misleading official statement.

Patrol Guide Procedure 212-08 (BR 74) states that all tasks performed, actions taken, and information pertinent to an assignment or observed/suspected violation of law be recorded in memo books.

Det. Baker was given the opportunity to explain why he altered a prior memo book entry but instead provided a misleading official statement in his interview by denying this and claiming instead that his "pen ran out of ink." § 87(2)(g)

§ 87(2)(g), § 87(4-b)

interactions that escalate and become adversarial, interactions with persons suspected of criminal activity, and arrests.

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 69).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 70).
- Sgt. Scogmanillo has been a member of service for 15 and has been a subject in 18 CCRB complaints and 43 allegations, of which five have been substantiated.
 - 201104149 involved substantiated allegations of a frisk, search (of person), and a stop against Sgt. Scogmanillo. The Board recommended charges, and the NYPD imposed instructions.
 - 201804810 involved substantiated allegations of an entry and abuse (other) against Sgt. Scogmanillo. The Board recommended Command Discipline A, and the NYPD imposed formalized training.
- Inspector Colon has been a member of service for 27 years and has been a subject in 15 CCRB complaints and 29 allegations, of which seven have been substantiated.
 - 9604418 involved substantiated allegations of physical force, a threat of force, and a discourtesy. The Board recommended charges. There was no NYPD penalty noted.
 - 201709116 involved substantiated charges of retaliatory arrests. The Board recommended charges. There was no NYPD penalty noted.
- Det. Baker has been a member of service for eight and has been a subject in 10 CCRB complaints and 20 allegations, none of which were substantiated. § 87(2)(g)
- PO Viti has been a member of service for six and has been a subject in one CCRB complaint and two allegations, none of which were substantiated. § 87(2)(g)
- PO Colon has been a member of service for eight and has been a subject in four CCRB complaints and seven allegations, one of which was substantiated.
 - 201605977 involved a substantiated allegation of an entry/search against PO Colon. The Board recommended formalized training, and the NYPD imposed formalized training.

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming physical injuries, mental anguish, humiliation, embarrassment, public disgrace, emotional distress, damage to reputation, and cruel and inhuman treatment and seeking \$5,000,000 as redress (BR 71). There is no 50H hearing scheduled.

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 10

Investigator: Maura R. Roche SI Maura R. Roche 6/25/2021
Signature Print Title & Name Date

Squad Leader: Eric Rigie IM Eric Rigie 6/28/2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date